

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION (Special Ancillary Matters)	: No. 2:18-md-02323-AB : : MDL No. 2323 :
Kevin Turner and Shawn Wooden, <i>on behalf of themselves and others similarly situated,</i>	: No. 2:12-md-02323-AB : : MDL No. 2323 :
Plaintiffs,	: Hon. Anita B. Brody :
v.	:
National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc.,	: : : :
Defendants.	:
THIS DOCUMENT RELATES TO: ALL ACTIONS	: : : :

**MEMORANDUM OF LAW OF CLASS MEMBER ANDREW STEWART
SUPPORTING HIS MOTION TO REQUIRE CLAIMS ADMINISTRATOR
TO PAY MONETARY AWARD**

I. INTRODUCTION AND BACKGROUND

On October 3, 2017, the Claims Administrator notified Andrew Stewart that his Monetary Award was \$700,000.00. On February 15, 2018, the Claims Administrator notified Mr. Stewart that his award would be funded as part of Funding Request No. 13.

Mr. Stewart had previously entered into two purported assignment agreements with a funder known as Ludus Capital, receiving cash in the total amount of \$180,000. Ludus Capital subsequently transferred both agreements to

Peachtree Financial LLC (“Peachtree”). In January 2016, Mr. Stewart entered into a purported assignment agreement with RD Legal Funding, LLC (“RD Legal”). RD Legal paid \$270,000 to Peachtree, thereby terminating Mr. Stewart’s agreement with that funder, and \$73,120 directly to Mr. Stewart.

On March 7, 2018, RD Legal filed a Motion to Stay Pending Appeal of this Court’s Orders of December 8, 2017 and February 20, 2018 (the “Orders”), which voided purported assignment agreements entered into by RD Legal (and other funders) and the class members, including Andrew Stewart. Mr. Stewart was still waiting to receive his Monetary Award, so he opposed the stay motion. This court denied RD Legal’s stay motion March 26, 2018. RD Legal then filed an Emergency Motion for Stay with the Third Circuit.

On or about April 7, 2018, Mr. Stewart received a partial payment of his monetary award. The Claims Administrator, however, withheld \$343,120.53 from his payment because of RD Legal’s potential rescission claim. On April 10, 2018, the Court of Appeals for the Third Circuit denied RD Legal’s Emergency Motion.

That same day, RD Legal executed the rescission and waiver of claims form and submitted it to the Claims Administrator. RD Legal asserted that the rescission amount was \$343,120.53, which was the combined amount it paid to Peachtree and Mr. Stewart.

Mr. Stewart refused to sign, however, because he disagreed with the amount claimed by RD Legal. The Court’s Order of December 8, 2017 states that

“under the principle of rescission, Class Members should return to the Third-Party Funder the amount already *paid to them*.” (ECF No. 9517 at p. 5 (emphasis added).) Mr. Stewart received only \$180,000 from Ludus Capital/Peachtree, not \$270,000, and \$73,120 from RD Legal. That is a total of \$253,120 of cash he actually received from the funders. The remaining \$90,000 RD Legal paid to Peachtree constituted fees, charges, payments or interest that this Court has now determined to be void and illegal. Mr. Stewart would not accept RD Legal’s tendered rescission and waiver offer because it included this \$90,000 of illegal charges. None of that \$90,000 was “paid to [him].”

To date, the Claims Administrator has not released any further funds to Mr. Stewart despite repeated requests from his counsel.

II. ARGUMENT

This Court’s Order of December 8, 2017 states;

To the extent that any Class Member has entered into an agreement that assigned or attempted to assign any monetary claims, that agreement is void, invalid and of no force and effect. Class Members receiving awards are, by definition, cognitively impaired. A Third-Party funder entering an agreement with a Class Member would obviously know that simple fact. Additionally, the anti-assignment language in the Settlement Agreement clearly states the intent that Class Members are unable to make assignments. Thus, the Court has little sympathy for a Third-Party Funder that will not receive a return on its “investment.” Nevertheless, under the principle of rescission, Class Members should return to the Third-Party Funder *the amount already paid to them*. Accordingly, if the Third-Party Funder is willing to accept rescission and execute a valid waiver relinquishing any claims or rights under the entire agreement creating the assignment or attempted assignment, then the Claims Administrator

will be authorized to withhold—from the Class Member’s monetary award—*the amount already paid to the Class Member* under the agreement and return it to the Third-Party Funder.

(ECF No. 9517 at p. 5 (emphasis added).)

The Order seems to have contemplated a single transaction with a Third-Party Funder. As stated in the Order, under the rescission principle, a class member could be required to return the principal amount received by him, but not interest, fees or other illegal charges assessed by the now voided contract. If, hypothetically, the Peachtree agreement were the only operative agreement, there is no doubt that the rescission amount withheld by the Claims Administrator, and then paid to Peachtree (if a waiver were signed), would have been \$180,000, not \$270,000.

Mr. Stewart’s situation is more complicated because he entered into a transaction with RD Legal after entering into transactions with Ludus Capital/Peachtree. But the rationale of this Order is clear: the class member is responsible only for the *principal amount he received*, not for any illegal fees, charges, interest or other payments assessed by a funder or otherwise charged to a class member. Because *each of the purported assignment agreements entered into by Mr. Stewart is void* – the ones with Ludus Capital/Peachtree *and* the one with RD Legal – the rescission amount is, at most, \$253,120, not \$343,120.53.

The Claims Administrator must account for the fact that the earlier agreements are also void under the Court’s December 8 Order. To comply with the Court’s December 8 Order, the Claims Administrator must set the rescission

amount at \$253,120. As between Mr. Stewart and RD Legal, it is RD Legal that should bear the risk and burden of seeking a refund or repayment from Peachtree or suffer the loss of \$90,000. Otherwise, Mr. Stewart is not receiving the full protection of the Court's December 8 Order.

Moreover, Mr. Stewart had to incur thousands of dollars in attorneys' fees to fend off RD Legal's stay motion, which was soundly rejected by both this Court and the Third Circuit. "Rescission is an equitable remedy, the use of which is generally left to the courts' discretion." *Beck Chevrolet Co. v. GM LLC*, 787 F.3d 663, 680 (2d Cir. 2015). Here, it would be inequitable to permit a rescission without accounting for RD Legal's stay motion, which directly and immediately threatened to prevent Mr. Stewart from receiving *any* distribution of his Monetary Award whatsoever. The rescission amount should therefore be reduced further by the amount of Mr. Stewart's attorneys' fees he incurred to oppose the stay motion.¹

* * *

Despite repeated requests, the Claims Administrator has refused to distribute any additional funds to Mr. Stewart. Its refusal to distribute the remaining amount due to Mr. Stewart operates as a *de facto* stay of Mr. Stewart's Monetary Award even though the Court of Appeals for the Third Circuit denied RD Legal's Emergency Motion for Stay over two months ago. It is now past time

¹ If the Court agrees, counsel for Mr. Stewart will submit a fee statement to the Claims Administrator reflecting the fees incurred in opposing RD Legal's stay motion.

for the Claims Administrator to distribute the remaining amount of Mr. Stewart's Monetary Award (not including amounts withheld for the 5% attorney fee holdback or fees owed to Mr. Stewart's counsel). This means the Claims Administrator should tender \$253,120 to RD Legal less Mr. Stewart's attorneys' fees incurred in opposing the stay motion. If RD Legal rejects the tender, the entire \$341,120 should be paid to Mr. Stewart.

III. CONCLUSION

For the reasons stated above, Mr. Stewart respectfully requests that the Court issue an Order to the Claims Administrator to promptly tender to RD Legal a rescission amount of \$253,120, less the attorneys' fees incurred by Mr. Stewart in opposing RD Legal's stay motion, in return for RD Legal's complete waiver of its claims against Mr. Stewart. The Order should further provide that if RD Legal rejects the tender, the Claims Administrator should immediately pay to Mr. Stewart the \$343,120.53 currently being withheld from Mr. Stewart's Monetary Award.

Respectfully submitted,

Dated: June 12, 2018

/s/ Michael H. Rosenthal
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on June 12, 2018 on all counsel of record by the Court's ECF system and to the Claims Administrator via email.

/s/ Michael H. Rosenthal
Michael H. Rosenthal